

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Angela Rose Steward,

Plaintiff,

v.

16-CV-709
Decision and Order

Nancy A. Berryhill,
Acting Commissioner of Social Security,

Defendant.

On September 9, 2016, the plaintiff commenced this action. Docket Item 1. On October 26, 2016, this Court referred this case to United States Magistrate Judge Hugh B. Scott for all proceedings under 28 U.S.C. § 636(b)(1)(A) and (B). Docket Item 6. On May 1, 2017, the plaintiff moved for judgment on the pleadings or, in the alternative, to remand for further proceedings, Docket Item 16; on July 28, 2017, the defendant responded and cross-moved for judgment on the pleadings, Docket Item 17; and on August 29, 2017, the plaintiff replied, Docket Item 18.

On April 6, 2018, Judge Scott issued a Report and Recommendation ("R&R") finding that the plaintiff's motion to remand should be granted and that the defendant's motion should be denied without prejudice. Docket Item 19. The parties did not object to the R&R, and the time to do so now has expired. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2).

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a de novo review of those portions of a magistrate judge's

recommendation to which a party objects. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. See *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985).

Although not required to do so in light of the above, this Court nevertheless has carefully reviewed Judge Scott's R&R. Based on that review and the absence of any objections, the Court accepts and adopts Judge Scott's recommendation to grant the plaintiff's motion in part and deny the defendant's motion.

For the reasons stated above and in the R&R, the plaintiff's motion for judgment on the pleadings or, in the alternative, to remand for further proceedings, Docket Item 16, is GRANTED in part—that is, the Court vacates the Commissioner's final determination and remands the case for further proceedings—and DENIED without prejudice in all other respects; and the defendant's motion for judgment on the pleadings, Docket Item 17, is DENIED without prejudice. The decision of the Commissioner is VACATED and the matter is REMANDED for further administrative proceedings. The Clerk of the Court shall close the file.

SO ORDERED.

Dated: May 8, 2018
Buffalo, New York

s/Lawrence J. Vilardo
LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE